

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FORTRESS VALUE RECOVERY FUND I, LLC)	CASE NO. 1:11-CV-00200
)	
Plaintiff,)	JUDGE JAMES S. GWIN
)	
v.)	
)	
COLUMBUS COMPONENTS GROUP, LLC, CCG HOLDINGS, LLC, PJ MANAGEMENT GROUP, LLC, HAWTHORN MANUFACTURING CORPORATION, and PATRICK JAMES)	
)	<u>DEFENDANTS' MOTION TO</u>
Defendants.)	<u>COMPEL</u>

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Defendants, Columbus Components Group, LLC, CCG Holdings, LLC, and PJ Management Group, LLC (collectively “Movants”), hereby respectfully move this Court for an order compelling counsel for Plaintiff Fortress Value Recovery Fund I, LLC to provide a letter outlining Plaintiff’s basis for standing to sue in this action to counsel for the Defendants, pursuant to this Court’s instructions at the Case Management Conference conducted on April 13, 2011.

The grounds for this Motion are set forth in the following Memorandum in Support and in the Affidavit of Patrick J. Keating (“Keating Affidavit”) attached hereto as Exhibit A, both of which are incorporated herein by reference.

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP

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MEMORANDUM IN SUPPORT

I. Statement of Facts

On April 13, 2011, this Court held a Case Management Conference for the above-referenced case. At this Case Management Conference, Attorney Scott Balber, on behalf of Plaintiff, represented that he would send a letter to counsel for the respective Defendants shortly after the Case Management Conference which would set forth the basis for Plaintiff's position that it has standing to pursue the claims set forth in its Complaint with specific reference to the documents which Plaintiff has produced in its Initial Disclosures. (Keating Affidavit ¶ 5.)

On Tuesday, April 19, 2011, six days after the Case Management Conference, Attorney Patrick Keating, counsel for Defendants, Columbus Components Group, LLC, CCG Holdings, LLC, and PJ Management Group, LLC, sent an email to Mr. Balber, inquiring when counsel for the Defendants might expect to receive Mr. Balber's promised letter. (Keating Affidavit ¶ 6.) A

copy of Mr. Keating's email to Mr. Balber dated April 19, 2011 is attached as Exhibit 1 to the Keating Affidavit. Mr. Keating never received any response to his email dated April 19, 2011. (Keating Affidavit ¶ 7.)

Approximately one week later, Attorney Pete Elliott, counsel for co-defendants Hawthorn Manufacturing Corporation and Patrick James, and Mr. Balber engaged in an email exchange on discovery issues, at which time Mr. Keating learned for the first time that Mr. Balber had now changed his position and would not be providing the letter promised at the Case Management Conference until he had responded to the Defendants' discovery requests. (Keating Affidavit ¶ 8.) Mr. Keating then sent Mr. Balber a letter on the morning of April 28, 2011. (Keating Affidavit ¶ 9.) A copy of Mr. Keating's letter dated April 28, 2011 is attached as Exhibit 2 to the Keating Affidavit. Mr. Balber and Mr. Keating then engaged in an email exchange on April 28, 2011. (Keating Affidavit ¶ 10.) A copy of the email exchange dated April 28, 2011 is attached as Exhibit 3 to the Keating Affidavit.

Pursuant to Local Rule 37.1, Mr. Keating sent a letter to this Court on April 28, 2011 requesting a telephone conference with the Court to assist in resolving this discovery dispute. (Keating Affidavit ¶ 11.) A copy of Mr. Keating's letter to this Court dated April 28, 2011 is attached as Exhibit 4 to the Keating Affidavit. As requested by the Court, the Movants have now filed this Motion.

Mr. Keating certifies that he has made repeated and sincere good faith efforts to resolve this discovery dispute with Mr. Balber. (Keating Affidavit ¶ 12.) As of May 2, 2011, counsel for the Defendants still have not received any letter from Mr. Balber as promised at the Case Management Conference. (Keating Affidavit ¶ 13.)

II. Law and Argument

Pursuant to Federal Rule of Civil Procedure 37(b)(2)(A), “[i]f a party... fails to obey an order to provide or permit discovery... the court where the action is pending may issue further just orders.” As this Court will recall, on April 13, 2011, this Court held a Case Management Conference. At that Case Management Conference, the parties all agreed that the issue of Plaintiff’s standing to bring this suit was a threshold issue. As such, in order to conserve the resources and time of the parties, the parties agreed that it would be prudent to address this issue in an expedited fashion. Attorney Scott Balber, on behalf of Plaintiff, represented to this Court that he would send a letter to counsel for the respective Defendants shortly after the Case Management Conference which would set forth the basis for Plaintiff’s position that it has standing to pursue the claims set forth in its Complaint with specific reference to the documents which Plaintiff has produced in its Initial Disclosures. (Keating Affidavit ¶ 5.) As of May 2, 2011, counsel for the Defendants still have not received any letter from Mr. Balber as promised at the Case Management Conference. (Keating Affidavit ¶ 13.)

Mr. Keating certifies that he has made repeated and sincere good faith efforts to resolve this discovery dispute with Mr. Balber. (Keating Affidavit ¶ 12. *Also see Exhibits 1, 2, and 3.*) Mr. Keating sent his first correspondence to Mr. Balber regarding this issue on Tuesday, April 19, 2011, six days after the Case Management Conference. (Keating Affidavit ¶ 6. *Also see Exhibit 1.*) Mr. Keating never received any response. (Keating Affidavit ¶ 7.) Mr. Keating sent his second correspondence to Mr. Balber on the morning of April 28, 2011. (Keating Affidavit ¶ 9. *Also see Exhibit 2.*) Later that day, Mr. Balber and Mr. Keating engaged in an email exchange. (Keating Affidavit ¶ 10. *Also see Exhibit 3.*) Despite these multiple sincere, good faith attempts to resolve this dispute, counsel for the Defendants still have not received the letter

promised by Mr. Balber regarding the issue of standing. (Keating Affidavit ¶ 12-13.) And as such, we regretfully request the Court's assistance in this matter. Moreover, Mr. Balber has refused requests by both Mr. Keating and Attorney Elliott to discuss this matter further to attempt to reach some agreement on the production of this information.

III. Conclusion

On April 13, 2011, at the Case Management Conference, Attorney Scott Balber, on behalf of Plaintiff, represented that he would send a letter to counsel for the respective Defendants shortly after the Case Management Conference which would set forth the basis for Plaintiff's position that it has standing to pursue the claims set forth in its Complaint with specific reference to the documents which Plaintiff has produced in its Initial Disclosures. Despite repeated and sincere good faith efforts to resolve this discovery dispute with Mr. Balber, counsel for the Defendants still have not received any letter from Mr. Balber as promised at the Case Management Conference. Movants, therefore, respectfully move this Court for an order compelling counsel for Plaintiff Fortress Value Recovery Fund I, LLC to provide a letter outlining Plaintiff's basis for standing to sue in this action to counsel for the Defendants by the end of this week.

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed electronically this 2nd day of May, 2011 and that a copy of the foregoing was served upon all parties in this case by operation of this Court's electronic filing system.

/s/ Amanda T. Quan

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